



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1996

Mr. David Brown
Legal Counsel
General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR96-0963

Dear Mr. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37498.

The General Services Commission (the "commission") received a request for all documents on two companies in Fort Worth that are being audited by the commission and for all documents on all entities involving Juanita Jean Burgoon and Yolanda Cuevas Chavera. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute and information protected by common-law or constitutional privacy. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. The federal tax return information must be withheld from disclosure wherever it appears in the submitted information.

For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information... is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the

publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.101 also excepts information that is confidential under constitutional or common-law privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy. The remaining information may not be withheld under either a constitutional or common-law privacy.

You claim that some of the information is excepted from disclosure under sections 111.006 and 151.027 of the Tax Code. Section 151.027(a) provides:

(a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in

a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

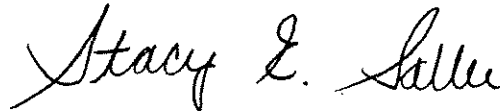
The commission has submitted sales and use tax returns to this office for review. This office has previously held that section 151.027 applies only to records and information in the possession of the comptroller's office. Open Records Decision No. 520 (1989). Therefore, the commission may not withhold this information from required public disclosure.

The same is true for the Texas Employment Commission documents submitted to this office for review. We believe that those documents are confidential only in the hands of the Texas Employment Commission. *See generally* Open Records Decision No. 533 (1989) (information in worker's compensation claim file held by Industrial Accident Board deemed confidential by law, but information in worker's compensation claim file held by public employer is not confidential by law unless it was obtained from board). Therefore, with the exception of certain information on those documents that we have marked that must be withheld under section 552.101 for other reasons, the commission may not withhold those documents.

We note that some of the submitted documents contain social security numbers. Federal law may prohibit disclosure of these social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

Pursuant to section 552.301 of the Government Code, the commission may rely on this ruling as a "previous determination" regarding federal income tax return information. Accordingly, the commission need not seek a decision from this office for future requests for this information. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Stacy E. Sallee".

Stacy E. Sallee
Assistant Attorney General
Open Records Division

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Ref.: ID# 37498

Enclosures: Marked documents

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